IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9823 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAMBHUNATH SANKTHAPRASAD MALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9823 of 1999

MR PK Shukla for Petitioner No. 1

Mr. ND Gohil, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Shukla for the

petitioner and Mr. N.D. Gohil, learned AGP for the respondent authorities. The facts of the present petition, in short, are to the effect that the petitioner who joined his services as mali on 1.2.1964 retired as such on 31.7.1998. According to the petitioner, his date of birth is 1.7.38. As he was not paid the retirement benefits and pension after his retirement on 31.7.1998, on 10.1.1999, he made request for releasing his increments and other benefits but of no avail. According to the petitioner, though he is eligible for claiming pension, the respondents have denied the same. According to him, the pension is required to be fixed after considering continuous service and increments which are due but not released. The file is not clear at the level of the first and second respondent and, therefore, the petitioner has filed this petition.

Affidavit in reply to the present petition has been filed by the respondents wherein it has been pointed out that the papers were forwarded to the office of the Director of Pension an Provident Fund on 19.12.1998 but some query was raised by the said authority and, therefore, increments were not released in favour of the petitioner . According to the respondents, the objections raised by the said authority are under compliance and, therefore, pension has not been fixed. According to the learned AGP Ms. Archana Raval, the petitioner has not passed the examination of the Gujarati Language which was must and for that, no exemption is permissible and, therefore, increments were not released in favour of the petitioner and, therefore, according to her, in view of that, an amount of Rs.4873.00 is yet required to be recovered from the petitioner and as and when the said amount is deposited by the petitioner, his pension pension could be finalized.

In view of the submissions made by the learned AGP Ms. Raval and also considering the affidavit in reply and the letter dated 28.3.2000 and also considering the fact that now the petitioner has already retired on 31.7.1998 and also considering the fact that he has completed qualifying service for pensionary benefits, and also considering the fact that more than five years period has gone after his retirement, it would be just and proper to direct the respondent authorities to finalize the pension papers of the petitioner without first insisting for deposit of the amount of Rs.4873.00 from the petitioner which is, according to the respondents, required to be recovered from the petitioner. However, it would be open for the respondents to adjust the said amount from the retirement

benefits petitioner i.e. from the total amount payable to the petitioner towards the retirement benefits, the respondents can deduct and adjust the said amount first and then pay remaining amount to the petitioner, if at all the same is required to be recovered from the petitioner within some reasonable period.

In the result, the respondents are directed to finalize the pension papers of the petitioner and to decide as to for how much amount the petitioner is entitled to receive towards the pensionary benefits from the date of his retirement till 30th September, 2003 and to pay such amount of arrears of pensionary benefits to the petitioner within two months from the date of receipt of copy of this order. From such amount, it will be open for the respondents to adjust and/or recover the amount of Rs.4873.00 which is required to be recovered from the petitioner as per the statement made by Ms. Archana Raval, learned AGP for the respondents. The respondents are also directed to regularly pay the monthly pension payable to the petitioner regularly from October, 2003. With these observations and directions, this petition is disposed of. Rule is made absolute in aforesaid terms with no order as to costs.

Dt.29.9.2003. (H.K. Rathod,J.)

Vyas